

Exhibit “H”

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Office of  
**District Attorney**  
**Pershing County**  
P.O. Box 299/400 Main Street  
Lovelock, Nevada 89419

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Deputy District Attorney

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November 21, 2005

Mr. Ray Allen  
Black Rock City LLC  
P.O. Box 884688  
San Francisco, CA 94188-4688


RE: Burning Man Agreement

Dear Mr. Allen:

Enclosed for your file is the original Agreement and Settlement between Pershing County and Black Rock City which was signed by Roger Mancebo. The County has a duplicate original of this Agreement.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,

  
Caroline Cater  
Legal Secretary

/cc  
encl.

## **AGREEMENT AND SETTLEMENT**

This Agreement and Settlement (“Agreement”) is entered into by and between Pershing County (herein the “County”), by and through the Pershing County Commissioners, and Black Rock City, LLC (“Black Rock City”) by and through an authorized Black Rock City, LLC representative.

### **RECITALS**

- A. The Burning Man Event has been held every year since 1998 on Bureau of Land Management land in the Black Rock Desert of Pershing County. More than 30,000 people have attended the Burning Man Event each year since 1999.
- B. In 2004, Pershing County amended the Pershing County Festival Ordinance to require that a fee be paid by any event occurring in the county where more than 1,000 people attend.
- C. The County and Black Rock City have significant disagreements about the legal application of the Festival Ordinance to events held on federal public lands managed by the Bureau of Land Management (“BLM”).
- D. Both parties have agreed to put aside their differences in the best interest of both and have come up with the mutual promises contained in this Agreement. Black Rock City and the County agree as follows:

### **AGREEMENT**

**1. Definitions:** The definitions herein shall govern the Agreement:

- a. *Burning Man Event:* The Burning Man Event is defined for purposes of this Agreement as the annual event put on by Black Rock City, L.L.C. in the Black Rock Desert each year during the week before and including Labor Day.
- b. *Base Charitable Donation:* The annual Base Charitable Donation, for purposes of this Agreement shall be forty thousand dollars (\$40,000.00).

c. *Total Charitable Donation:* Total amount paid by Black Rock City in a given year including the percentage increase based on that year's population increase over 2005 population.

d. *Peak Population:* Peak Population shall be defined by the maximum population of Black Rock City in the Burning Man Event as used by the Bureau of Land Management to calculate its permit fees from the Burning Man Event.

e. *Percentage of Peak Population Increase:* The percentage of increase in peak population shall be determined by dividing the difference between the peak population of a particular year by the peak population from 2005. For example, if the peak population of 2005 is 35,000 and the peak population of 2006 is 38,000 then Percentage of Peak Population Increase is  $(38,000 - 35,000) / 35,000 = 8.5\%$ .

2. **Donations:** The donations are as follows:

a. *ALLOCATION:* Black Rock City has agreed to provide a Base Charitable Donation of \$40,000 annually beginning in 2005. In 2005 and subsequent years, the Total Charitable Donation shall be allocated as follows: Seventy-five percent (75%) of the Total Charitable Donation shall be provided directly to the general fund of Pershing County; and Twenty-Five (25%) of the Total Charitable Donation will be donated to organizations/ entities/groups that are based in, and service Pershing County residents as determined by Black Rock City.

b. *DONATION:* In 2005, the Total Charitable Donation shall consist solely in the amount of the Base Charitable Donation of forty thousand dollars (\$40,000.00). In subsequent years, the Total Charitable Donation shall be computed according to the growth or non-growth of the peak population as set forth herein.

c. *GROWTH:* In years subsequent to 2005, the Total Charitable Donation shall consist of the Base Charitable Donation multiplied by the sum of: the percentage of peak population increase and one hundred percent (100%). For example, if the Percentage of Peak Population Increase is

5 % in a given year then the Total Charitable Donation amount will increase by 5% over the Base Charitable Donation.

d. *NONGROWTH/DECLINE*: In the event that in a year subsequent to 2005, the Peak Population declines or there is no growth as compared to 2005, the Base Charitable Donation shall be paid, unless the parties agree in writing prior to the payment date that a lesser amount may be paid.

e. *PAYMENT DATE*: Black Rock City agrees to pay the Total Charitable Donation for each respective year prior to December 1 of that year. The payment for 2005 shall be made on or before December 1, 2005.

3. **Modification of Festival Ordinance**: The County agrees to amend the current Pershing County Festival Ordinance such that it implements this Agreement. The County also agrees not to enact any other similar legislation that would tax or require Black Rock City to pay any festival, assembly or use fees to the County unless a state or federal law/statute requires such enactment of an ordinance, at which time the County will give notice and have an open meeting discussion with Burning Man.

4. **Operation of Agreement**. The parties agree that this Agreement shall continue in effect each year. The term of the Agreement will continue as long as the Burning Man Event is held in Pershing County.

5. **BLM Payment of Law Enforcement Fees**. The Agreement is subject to and premised upon the continued payment of law enforcement fees for the Pershing County Sheriff's Office ( herein "Local Law Enforcement Costs") through the BLM. In the event that the BLM determines that the BLM will not pay for Local Law Enforcement Costs, both parties agree to make reasonable efforts to persuade BLM officials to continue to pay Local Law Enforcement Costs. If efforts are unsuccessful in persuading

BLM officials to continue payment of Local Law Enforcement Costs, the parties agree to negotiate in good faith to attempt to keep the Agreement in place and to rectify the BLM's decision.

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada without reference to its conflict of laws principles.

7. **Entire Agreement.** This Agreement constitutes the entire Agreement between Black Rock City and the County and supersedes any and all other Agreements between Black Rock City and the County, unless expressly stated otherwise herein. No other promise or inducement has been offered for this Agreement. Any amendments to this Agreement must be in writing, signed by duly authorized representatives of both the County and Black Rock City, and must state that the parties intend to amend the Agreement.

8. **Partial Invalidity.** The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

9. **Miscellaneous.** The waiver or failure of either party to exercise any right provided for herein shall not be deemed a waiver of any prior or future right hereunder. This Agreement shall be binding upon Pershing County and benefit Black Rock City, its successors and assigns. Paragraph headings are used for convenience only, and shall not affect the interpretation, nor be deemed to be a part of this Agreement.

Dated: Nov. 14, 2005

Dated: \_\_\_\_\_, 2005

Dated: \_\_\_\_\_, 2005

  
Marian Goodell, Black Rock City, LLC

  
Roger Mancabo  
Chairman, Pershing County Board of Commissioners

ATTESTED TO

By:   
Donna Giles, Pershing County Clerk.